

CERTIFICATE OF SERVICE

FEB 22 2021

COURT OF SPECIAL APPEALS

I, BOISEY LEVERN NEAL, HEREBY CERTIFY that a copy of the Appellant's handwritten letter in response to the Appellee's Brief, was mailed certified first class postage prepaid on the 16th, day of FEBRUARY, 2021, to the Court of Special Appeals, Robert C. Murphy Courts of Appeal Building, 361 Rowe Boulevard, Annapolis, Md 21401-1699, and to the Office of the Attorney General, 200 St. Paul Place, Baltimore, Maryland 21202.

Respectfully written,

MR. BOISEY L. NEAL #349847

SID#978871

Mr. Boisey L. Neal

2/15/2021

To: The Honorable Court of Special Appeals,
Boisey LEVERN Neal, SEPTEMBER TERM, 2020 No. 590

Good Day To This Honorable Court...

The Appellant would like to address the
Attorney General's Brief.

1). The Hon. Judge W. Michel Pierson, "was not"
the Judge Presiding who "DENIED" the Request
for Credit on July 20th, 2020.

The Judge who "DENIED" the Credit was the
Hon. Judge Anthony F. Vittoria.

SEE page 2, of The Attorney General's Brief
~~XXXXXX~~ highlighted in yellow.

2). The Argument has the wrong Resentencing
date (DECEMBER 12TH, 2029). DECEMBER 20TH,
2019, is the correct date.

The Appellant ask this Honorable Court to Please
Review the "MEMORANDUM AND ORDER" of "Judge
Anthony F. Vittoria's" DENIED ORDER
Dated: July, 20th, 2020...

** The Appellant did not ^{*}Challenge^{*} The Hon.
W. Michel Pierson's RESENTENCING Hearing as
stated on The Appellee's Brief.

As Reviewed from The Appellant's Copy
of the denied Motion for "Credit for Time
Spent in Custody for Sentence that was
"Set aside" (illegal 10 year sentence) first
imposed on March 10th, 2009; The Appellant
Requested for "Credit" for the Time he
Served before the RESENTENCING on 12/20/11

The Appellant ask this Court to also Review
"LARRY DANIEL BRATT'S" 2018 CASE in which
this Honorable Court has clearly Stated:

WE SEE NO basis on which to disturb
"this Court's" decision in Smith that what
is CURRENTLY Rule 4.345(a) is an "appropriate"
"Mechanism" to CORRECT a failure to "award
Credit" for time SERVED."

This Court went on to say in LARRY DANIEL
Bratt: "If a court has refused to provide
"appropriate credit," the effect is to leave
the inmate incarcerated beyond the term
legally permitted.

That would therefore result in a "substantive illegality," not a procedural one, and is the proper subject of a "Motion to correct an illegal sentence".

The Appellee (Attorney General) has used *Bratt v. State*, 468 Md. 481, 499-500 (2020), that brings forth a "misinterpretation" of the time the Appellant spent in pre-trial detention in North Carolina - is not the proper subject of a Motion to correct an illegal sentence.

It has already been made clear by this Court, that a Motion to correct an illegal sentence, is an "appropriate mechanism" to correct a failure to "award credit for time served."

The Appellant ask this Honorable Court to Please Rule in his favor. I am now 55 years old and this is my 15 year incarcerated. By the law of this Court, A defendant must receive "Credit" for all time spent in custody of a Correctional facility ... " Under § 6-218 (b)(1)(c)(d) if a sentence has been "set aside" for resentencing, this is not Ambiguous and the correct starting date should be as October 18th, 2006.

The Attorney General's office should clearly re-read the law on "Credit" under C.P. 6-218 (b)(1)(c)(d). The Appellant should be given "Credit" based on the 10 year + 9 months Resentencing "alone" without a Transcript, because the Court has proven that a Resentencing did take place on December 20, 2019. I should receive Credit!

THE Appellant ask this Honorable Court to PLEASE REVIEW his 'Whole Case' closely as well as the BRIEF OF THE APPELLEE, to SEE all of the "INCONSISTENCY" of THE APPELLEE'S BRIEF...

PAGE 3, the APPELLEE USES the "transcript" pages from the 3/10/2009, plea hearing, but fail to site the fact that a transcript is "Not needed to REQUEST Credit"...

SEE PAGE 3, of THE APPELLEE'S BRIEF for the March 10th, 2009, quote of THE Transcript (T. 3/10/09 at 20-21, 22-23).

THE DECEMBER 20TH, 2020, "Transcript" will be "SENT" TO THIS Honorable Court within the next few days as well as to THE Attorney General's Office.

PLEASE REVIEW THE CLEAR CASE law in 'Bratt' 2018, Highlighted in yellow. This COURT has ALREADY Rule..

correcting the *amount* of credit to which Mr. Bratt was entitled. That problem was not fully corrected earlier, the State argues, because it was not until October 2017 that Mr. Bratt provided documentation to verify the fact and length of his incarceration in Georgia. We address each of these arguments below.

B. A Defendant Is Entitled to Credit for Time Served.

Under § 6-218(b) of the Criminal Procedure Article, a defendant is entitled to “credit against and a reduction of the term of a definite or life sentence . . . for all time spent in custody of a correctional facility . . .” Md. Code Ann., Crim. Pro. § 6-218(b)(1) (Repl. 2018). Thus, subject to caveats not relevant here, a sentence imposed against a defendant must credit him or her for time spent in custody. *See Lawson v. State*, 187 Md. App. 101, 107 (2009) (“[U]pon conviction, a defendant must be credited for time he has served in custody because of that crime.”) (internal quotation marks removed); *Smith*, 31 Md. App. at 315 (“Credit is required to be given for time spent in custody . . .”). Because the parties agree as to the amount of time Mr. Bratt spent incarcerated before trial, they also agree that the correct start date for his sentence is July 16, 1982.

C. A Claim That an Inmate Has Been Denied Credit for Time Served Can Be Raised in a Motion to Correct an Illegal Sentence Under Rule 4-345(a).

The parties disagree as to whether a motion to correct an illegal sentence can be premised on the failure to provide proper credit for time served. Mr. Bratt relies primarily on *Smith v. State* in arguing that a motion to correct an illegal sentence is a proper mechanism to challenge the failure to provide appropriate credit. In *Smith*, the circuit court sentenced a defendant found guilty of murder to 12 years’ incarceration without affording

credit for 19 months' time she served before trial.⁴ 31 Md. App. at 312-13. Upon realizing its error, the court sought to correct it. However, instead of providing the credit against the sentence it had just imposed, the court resentenced the defendant to 15 years' incarceration and then provided the 19 months' credit against that new sentence. *Id.* at 315. On appeal, this Court concluded that the actual term of the sentence initially imposed—12 years' incarceration—was legal, and that “the only aspect of the sentence that was illegal was the lack of credit for time served.” *Id.* at 320. As a result, we held, the circuit court should have granted credit for time served without lengthening the term of the sentence: the Rule allowing correction of an illegal sentence at any time—what is now Rule 4-345(a)—“permitted th[e] defect [in not awarding credit] to be corrected, but it did not empower the judge to strike the 12 year term.” *Id.*

The State responds that we should decline to follow our precedent in *Smith*, which the State mentions only in a brief footnote, because it “was decided long before the scope of ‘illegal sentence’ was defined.” However, the State does not explain what aspect of the definition subsequently given to the scope of a motion to correct an illegal sentence has purportedly rendered *Smith* bad law. The State cites generally to cases that identify the scope of Rule 4-345(a) as limited to substantive deficiencies that inhere in a sentence. *See, e.g., Chaney v. State*, 397 Md. 460, 466 (2007). However, it is not readily apparent how that limitation would preclude a motion based on failure to award credit for time served,

⁴ *Smith* involved a host of procedural errors committed by the circuit court in its effort to correct its originally-defective sentence, most of which we do not discuss because they are not relevant here.

which, if true, is a defect that actually increases the length of time an inmate is required to serve beyond what is permitted by statute. We do not find the State's attempt to distinguish *Smith* persuasive.

As an alternative to *Smith*, the State relies on *Haskins v. State*. There, we addressed an inmate's claim, raised by a motion to correct an illegal sentence, that he was entitled to credit for time he had previously served on different convictions. 171 Md. App. at 185. Before reaching that issue, however, we "[p]reliminarily" expressed skepticism as to whether that claim was "a proper subject for a motion to correct illegal sentence." *Id.* at 188. Noting that the inmate was not challenging the actual sentence he was then serving, we stated that "[i]t thus appears that the motion did not have a proper basis, and the trial court correctly denied it for that reason." *Id.* at 189. We nonetheless assumed, without deciding, that a motion to correct an illegal sentence was a proper mechanism to bring that challenge, and went on to decide the merits. *Id.* Notably, the relevant passage in *Haskins*, which the State properly acknowledges is dicta, did not refer to or distinguish this Court's earlier decision in *Smith*. Indeed, it is not apparent from the discussion in *Haskins* that this issue was raised or briefed by the parties at all.

We see no basis on which to disturb this Court's decision in *Smith* that what is currently Rule 4-345(a) is an appropriate mechanism to correct a failure to award credit for time served. If a court has refused to provide appropriate credit, the effect is to leave the inmate incarcerated beyond the term legally permitted. That would therefore result in a

substantive illegality, not a procedural one, and is the proper subject of a motion to correct an illegal sentence.

Notably, however, as this Court observed in *Smith*, although a failure to provide proper credit against a sentence has the effect of unlawfully increasing the amount of time an inmate may remain incarcerated, it does not call into question the term of the sentence imposed. 31 Md. App. at 320. The problem is the violation of the statutory requirement to provide credit against that term, not the term itself. *Id.* Thus, even if it had been appropriate for the court to grant Mr. Bratt's 2018 Motion to Correct, the appropriate relief would have been to provide credit for time served, not to strike and reimpose Mr. Bratt's two life terms. As we explain below, however, even that was unnecessary as a result of the 2017 Amendment.

D. The 2017 Amendment Properly Amended the Commitment Record; No Hearing Was Required.

The parties disagree as to the effect of the court's November 2017 ruling that (1) concluded that Mr. Bratt was entitled to a credit of 102 days for the time he spent incarcerated in Georgia before being transferred to Anne Arundel County and (2) ordered that his commitment record be amended to reflect that credit by identifying the start date for the first of his two consecutive life sentences to be July 16, 1982. Relying on *Mateen v. Saar*, 376 Md. at 399, Mr. Bratt contends that the 2017 Amendment should be disregarded. The circuit court agreed. The State never addresses *Mateen* directly, but separately argues that no hearing was required for the circuit court to validly amend the

BOISEY LEVERN NEAL

Petitioner

v.

STATE OF MARYLAND

Respondent

*** IN THE**

*** CIRCUIT COURT**

*** FOR**

*** BALTIMORE CITY**

*** CASE NO.: 207255049-051**

FEB 22 2021

COURT OF SPECIAL APPEALS

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MEMORANDUM AND ORDER

The Court is in receipt of two related motions filed by the Petitioner: a motion for “Credit For All Time Spent in Custody for Illegal Sentence (Set Aside)” dated January 6, 2020 and filed on January 27, 2020 (hereinafter the “January 6 Motion”); and “Motion to Request Credit Under Maryland Code Criminal Procedure § 6-218 – Credit Against Sentence For Time Spent In Custody And Federal Criminal Law § 32 Double-Jeopardy-Retrial-Resentencing-Credit For Time Served” dated April 20, 2020 and filed April 24, 2020 (hereinafter the “April 20 Motion”). Because both Motions seek the same relief, both will be addressed in this Memorandum and Order.

RELEVANT BACKGROUND

On March 28, 2008, the Petitioner was sentenced to a combined sentence of 15 years by the Circuit Court for Anne Arundel County for the crimes of Armed Robbery and Use of a Handgun in the Commission of a Crime of Violence. The Petitioner was given 288 days of credit for time-served on this sentence.

On or about October 10, 2008, the Petitioner was sentenced by the Circuit Court for Baltimore County to a term of two years for a violation of probation. This sentence was to be consecutive to the Anne Arundel County sentence.

On March 10, 2009, the Petitioner entered guilty pleas in this Court to three counts of Armed Robbery and one count of Use of a Handgun in the Commission of a Crime of Violence. The guilty pleas were made following a plea agreement between the State and the Petitioner by which the Petitioner would receive concurrent ten-year sentences on the Armed Robbery counts and a concurrent five-year sentence on the Use of a Handgun in the Commission of a Crime of Violence count, for a total combined sentence of ten years. This ten-year sentence was to be consecutive to the 15-year sentence imposed by the Circuit Court for Anne Arundel County. In other words, the agreement was that the Defendant would serve a total of 25 years – 15 years for the Anne Arundel County offenses, followed by another ten years for the Baltimore City offenses. When this Court announced the sentence, it stated that the ten-year sentence would be consecutive to all other sentences. This phrasing had the unintended effect of making the Petitioner's total sentence 27 years – 15 years for the Anne Arundel County offenses, followed by two years for the Baltimore County probation violation, followed by the ten-year sentence for the Baltimore City offenses.¹

On or about May 17, 2019, the State filed a pleading entitled “State’s Response to Petition for Writ of Habeas Corpus and Motion to Correct Illegal Sentence” (hereinafter the “State’s Response”). The State’s Response was in response to a Petition for *Writ of Habeas Corpus* filed by the Petitioner on or about February 21, 2019. In the State’s Response, the State conceded that the sentence imposed by this Court was illegal because it did not comport exactly with the agreement of the parties at the time the Petitioner

¹ It appears the Court was not aware of the Baltimore County sentence at the time it originally sentenced the Petitioner.

entered his guilty plea. Accordingly, the State requested that the *Habeas* Petition be denied, but that a hearing be held on the legality of the original sentence.

This Court held a hearing on December 20, 2019. At that hearing, counsel for the Petitioner stated the following: “The Defense is in agreement that the intent of the parties was to have the ten-year sentence run consecutive to the 15-year sentence in Anne Arundel County. Therefore, the aggregate sentence should be 25 years, rather than the aggregate of 27 years.” At the conclusion of the hearing, this Court resentenced the Petitioner, making it clear that the ten-year sentence was to be consecutive only to the 15-year sentence imposed by the Circuit Court for Anne Arundel County.²

ANALYSIS

In both the January 6 Motion and the April 20 Motion, the Petitioner requests that the ten years and nine months that he has served be applied to the ten-year sentence imposed by this Court. The basis of the Petitioner’s request is that, by the time that the December 20, 2019 re-sentencing hearing occurred, he had completed the 15-year sentence imposed by Anne Arundel County and, therefore, “it would be wrong to run a ten (10) year sentence that has been ‘set aside’ for ‘resentencing’ consecutive to a sentence that no longer existed.” (April 20 Motion, at 3.) In the April 20 Motion, the Petitioner further asserts that his re-sentencing violated both the prohibition against double jeopardy contained in the Fifth Amendment and his due process rights under the Fourteenth Amendment.

² By law, the ten-year Baltimore City sentence runs concurrently with the two-year Baltimore County sentence because the Court did not expressly state that the two sentences were to run consecutively. *Gatewood v. State*, 158 Md.App. 458, 482 (2004).

The Petitioner's January 6 Motion and April 20 Motion shall be denied in all respects for the following reasons.

First and foremost, "[t]he Supreme Court has made clear that resentencing does not offend double jeopardy principles." *Twigg v. State*, 447 Md. 1, 21 (2016) (citing *United States v. DiFrancesco*, 449 U.S. 117, 132, 101 S.Ct. 426, 66 L.Ed.2d 328 (1980)). Likewise, the Petitioner's Fourteenth Amendment due process rights are not implicated because he received a lighter sentence when he was re-sentenced. *See Twigg*, 447 Md. at 22-23 (due process rights can be implicated only when a heavier sentence is imposed upon re-sentencing).

Second, the Petitioner bases his request on his assertion that he had completed the 15-year sentence imposed by Anne Arundel County by the date of the re-sentencing hearing. While the Petitioner's logic is not clear, what is clear is that the Petitioner has failed to provide any evidence proving this assertion. Accordingly, to the extent that the Petitioner's request rises or falls on whether or not he had already completed the 15-year at the time of the re-sentencing hearing, the Petitioner's request must be denied because he has failed to provide any proof that he has completed that sentence.

Third, even if the Petitioner had proven that he had completed the 15-year sentence imposed by Anne Arundel County, his Motions are denied because the 10-year Baltimore City sentence was always supposed to be consecutive to the 15-year Anne Arundel County sentence. This fact was acknowledged by the Petitioner's counsel at the December 20 resentencing hearing when he stated that "[t]he Defense is in agreement that the intent of the parties was to have the ten-year sentence run consecutive to the 15-year sentence in Anne Arundel County. Therefore, the aggregate sentence should be 25

years, rather than the aggregate of 27 years.” This makes perfect sense because the “illegality” of the original sentence related solely to the relationship between the Baltimore City and the Baltimore County sentences and had nothing to do with the relationship between the Anne Arundel County and the Baltimore City sentences.

Despite his claim that he would have “dead time” if his Motions were denied, the Petitioner is getting credit for his time-served. That credit is being applied to the 25-year aggregate sentence referenced by his attorney at the December 20 re-sentencing hearing. To rule any other way would have the result of treating all of the Petitioner’s sentences as running concurrently. That was never the intent of the parties and nothing about the timing of his re-sentencing changes that fact.

ORDER

Based on the foregoing reasons, the Petitioner’s January 6 motion and the Petitioner’s April 20 motion are denied in all respects.

ORDERED, this 20th day of July, 2020.

Anthony F. Vittoria
Judges Signature
Appears on Original Document